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10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 In re:
13
14 ICAP ENTERPRISES, INC., *et al.*,
15 Debtors.¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO OBTAIN POST-
PETITION SECURED FINANCING
PURSUANT TO SECTION 364 OF
THE BANKRUPTCY CODE;
(II) AUTHORIZING THE DEBTORS
TO USE CASH COLLATERAL;
(III) GRANTING SUPERPRIORITY
CLAIMS; (IV) PROVIDING**

23 ¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC
24 (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-
25 11); Vault Holding 1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and
26 Income Fund, LLC (23-01253-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap
27 Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-
01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11);
iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows
Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer
Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-
01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-
11); iCap Holding 5 LLC (23-01273-11); and iCap Holding 6 LLC (23-01274-11).

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**ADEQUATE PROTECTION AND
ADMINISTRATIVE EXPENSE
CLAIMS; AND (V) GRANTING
RELATED RELIEF**

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8 Upon the motion (the “Motion”) of the above-captioned debtors and debtors
9 in possession (the “Debtors”), in the above-captioned chapter 11 cases (the
10 “Bankruptcy Cases”), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2),
11 364(c)(3), 364(d) and 364(e) of Title 11 of the United States Code, 11 U.S.C. §§
12 101, et seq. (the “Bankruptcy Code”), and Rules 2002, 4001(c), and 9014 of the
13 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the
14 corresponding local rules of the United States Bankruptcy Court for the Eastern
15 District of Washington (the “Local Rules”), seeking authorization for the Debtors
16 to, among other things:

- 17 i. obtain post-petition loans, advances and other financial
18 accommodations (the “DIP Loans”) in an aggregate principal amount
19 not to exceed \$5,250,000, or up to \$6,750,000, in the event the DIP
20 Lender (as defined below) is granted a priming lien on the VH
21 Collateral (as defined in the DIP Agreement) pursuant to the terms and
22 conditions of the DIP Documents (as defined below) and this Order (the
23 “Final Order”);²

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25 ² Pursuant to the Interim Order (I) Authorizing the Debtors to Obtain Post-Petition Secured
26 Financing Pursuant to Section 364 of the Bankruptcy Code; (II) Authorizing the Debtors to Use
27 Cash Collateral; (III) Granting Superpriority Claims; (IV) Providing Adequate Protection and
28 Administrative Expense Claims; and (V) Granting Related Relief [Docket No. 68] (the “Interim
Order”), Debtors were authorized to borrow up to \$2,500,000.00 (the “Interim Borrowing Cap”).

- 1 ii. enter into, be bound by, and perform under (a) a debtor-in-possession
2 credit facility (the “DIP Facility”), pursuant to an agreement dated as
3 of October 3, 2023, by and among the Debtors and Serene Investment
4 Management, LLC (the “DIP Lender”, which agreement is attached
5 hereto as Exhibit 1 (as the same may be amended, restated,
6 supplemented, waived, or otherwise modified from time to time, the
7 “DIP Agreement”) and (b) the documents related to the DIP Agreement
8 (together with the DIP Agreement, the “DIP Documents”), all of which
9 were approved pursuant to this court’s *Interim Order (I) Authorizing
10 the Debtors to Obtain Post-Petition Secured Financing Pursuant to
11 Section 364 of the Bankruptcy Code; (II) Authorizing the Debtors to
12 Use Cash Collateral; (III) Granting Superpriority Claims;
13 (IV) Providing Adequate Protection And Administrative Expense
14 Claims; (V) Scheduling a Final Hearing; and (V) Granting Related
15 Relief* entered on October 5, 2023 [Docket No. 68] (the “Interim
16 Order”);
- 17 iv. grant to the DIP Lender First Priority DIP Liens (as defined below) on
18 all of the DIP Collateral (as defined below) not subject to a lien of any
19 third party to secure the DIP Facility and all obligations owing and
20 outstanding thereunder and under the DIP Agreement, as applicable,
21 and this Interim Order and the Final Order (as defined below), as
22 applicable (collectively, the “DIP Obligations”), subject only to prior
23 payment of the Carve-Out (as defined below), pursuant to section
24 364(c)(2) of the Bankruptcy Code;
- 25 v. grant to the DIP Lender Second Priority DIP Liens (as defined below)
26 on all Prepetition Collateral (as defined below) to secure the DIP
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1 Facility and all DIP Obligations, subject only to (a) the First Priority
2 Pledged Liens (as defined below) and (b) the Carve-Out, pursuant to
3 section 364(c)(3) of the Bankruptcy Code;

- 4 vi. to the extent the Debtors request an additional \$1,500,000 in financing
5 from the DIP Lender on a final basis, in addition to the \$5,250,000 in
6 financing that the DIP Lender has agreed to provide pursuant to the DIP
7 Agreement, and as described in i. (a) above, the DIP Lender will only
8 be granted priming liens on the Prepetition Collateral consisting of the
9 VH Collateral upon further order of this court after a new or
10 supplemental noticed motion and hearing subsequent to this Final
11 Order with all rights of senior lenders, including the Prepetition
12 Mortgage Lenders as to the Prepetition Collateral, including the VH
13 Collateral, being reserved pending the conclusion of any such hearing
14 and further order of the court, to secure the DIP Facility and all DIP
15 Obligations, subject only to the Carve-Out, pursuant to section 364(d)
16 of the Bankruptcy Code. Further, any provision in the DIP Agreement
17 related to priming liens shall have no force or effect unless and/or until
18 further order of this court pursuant to such new or supplemental hearing
19 on Debtors' request for the priming liens pursuant to section 364(d);
20 vii. grant to the DIP Lender allowed superpriority administrative expense
21 claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect
22 of all amounts advanced to the Debtors under the DIP Agreement;
23 viii. grant to the Prepetition Mortgage Lenders (as defined below) adequate
24 protection in respect of their rights under the Prepetition Documents (as
25 defined below) and their interests in the Prepetition Collateral;

- 1 ix. use the DIP Collateral and the Prepetition Collateral (the “Cash
2 Collateral”) in accordance with the Approved Budget (as defined
3 below) for the Final Period (as defined below);
4 x. use the proceeds of DIP Loans, subject to the terms, restrictions, and
5 other conditions of the DIP Agreement and this Final Order, to (a)
6 continue to accrue fees and expenses related to the DIP Agreement and
7 the Cases, and (b) fund working capital in the ordinary course of the
8 business of the Debtors and other general corporate purposes, in each
9 case, to the extent set forth in the Approved Budget and permitted under
10 the DIP Agreement;
11 xi. vacate and modify the automatic stay imposed by section 362 of the
12 Bankruptcy Code solely to the extent necessary to implement and
13 effectuate the terms of the DIP Documents and this Final Order;
14 xii. set a Final Hearing on the Motion; and
15 xiii. waive, to the extent applicable, any stay of the immediate effectiveness
16 of the Interim Order imposed by the Bankruptcy Code or the
17 Bankruptcy Rules, such that the Interim Order was immediately
18 effective upon its entry on the court’s docket.

19 The initial hearing on the Motion having been held by this court on October
20 4, 2023 (the “Interim Hearing”); and

21 It appearing that due and appropriate notice of the Motion, the relief requested
22 therein, the Interim Hearing and the Final Hearing was served by the Debtors in
23 accordance with Bankruptcy Rule 4001(c) on (i) the DIP Lender, (ii) counsel to the
24 DIP Lender, (iii) the Prepetition Mortgage Lenders, (iv) the Office of the United
25 States Trustee for the Eastern District of Washington (the “U.S. Trustee”), (v) the
26 holders of the thirty (30) largest unsecured claims against the Debtors’ Estates (on a
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1 consolidated basis), (vi) all of the Debtors' pre-petition secured creditors, (vii) the
2 United States Attorney's Office for the Eastern District of Washington; (viii) the
3 attorneys general in the states in which the Debtors conduct their business; and (ix)
4 any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively,
5 the "Noticed Parties"); and

6 This court having reviewed the Motion and any responses and objections
7 thereto, the *Declaration of Lance Miller in Support of First Day Motions*, the
8 *Declaration of Lance Miller in Support of Debtor in Possession Financing Motion*,
9 the other filings made by the Debtors, the evidence and testimony presented at the
10 Interim Hearing and the Final Hearing; and it appearing that granting the relief
11 requested in the Motion on a final basis is necessary to avoid immediate and
12 irreparable harm to the Debtors, and is otherwise fair and reasonable and in the best
13 interests of the Debtors, their estates and their creditors, and is essential for the
14 preservation of the value of the Debtors' property; and all objections, if any, to the
15 entry of this Final Order having been withdrawn, resolved or overruled by the court;
16 and after due deliberation and consideration and good and sufficient cause appearing
17 therefor,

18 **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF
19 FACT AND CONCLUSIONS OF LAW:**

20 A. Petition. On September 29 and 30, 2023 (as applicable, the "Petition
21 Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy
22 Code. The Debtors continue as debtors-in possession pursuant to sections 1107(a)
23 and 1108 of the Bankruptcy Code.

24 B. Jurisdiction and Venue. The court has jurisdiction over this case and
25 the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334.
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1 Venue in this court over the Cases and the Motion is proper pursuant to 28 U.S.C.
2 §§ 1408 and 1409.

3 C. Notice. Under the circumstances, the notice given by the Debtors of the
4 Motion, the Interim Hearing, the Final Hearing and the relief granted under this
5 Order constitutes due and sufficient notice thereof and complies with section 102(1)
6 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(c) and Local Rule 4001-
7 2.

8 D. Findings and Stipulation Regarding the DIP Lender and the Prepetition
9 Mortgage Lenders. In requesting the financing from DIP Lender and in exchange
10 for and as a material inducement to DIP Lender to agree to provide the financing in
11 accordance with the DIP Facility, the Debtors acknowledge, represent, stipulate and
12 agree, for themselves and their estates, subject to the Challenge (as defined below)
13 rights set forth in Section 9 of this Final Order, as follows:

14 (i) *Secured Note*. Debtors 725 Broadway, LLC and ICAP Campbell Way,
15 LLC are parties to that certain Promissory Note in the aggregate principal amount of
16 \$500,000, dated September 13, 2023 (the “Secured Note”), proceeds of which were
17 used by the Debtors to pay ordinary course expenses and prepare for this bankruptcy
18 case. The Secured Note is secured by (the “DIP Lender Prepetition Liens”): (i) that
19 certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and
20 Fixture Filing of substantially even date herewith, made by and among the Broadway
21 Borrower as “Grantor”, in favor of Lender as “Beneficiary” and appointing Chicago
22 Title Company as “Trustee” (the “Broadway Deed of Trust”), which encumbers
23 certain real property in the City of Tacoma, County of Pierce, State of Washington
24 as more particularly described in the Broadway Deed of Trust (the “Broadway Real
25 Property”) and (ii) that certain Deed of Trust, Assignment of Leases and Rents,
26 Security Agreement and Fixture Filing of substantially even date herewith, made by
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1 and among the Campbell Way Borrower as “Grantor”, in favor of Lender as
2 “Beneficiary” and appointing Chicago Title Company as “Trustee” (the “Campbell
3 Way Deed of Trust”; and together with the Broadway Deed of Trust, each a “Deed
4 of Trust”, and together the “Deeds of Trust”), which encumbers certain real property
5 in the City of Bremerton, County of Kitsap, State of Washington as more particularly
6 described in the Campbell Way Deed of Trust (the “Campbell Way Real Property”;
7 and together with the Broadway Real Property, collectively referred to as the “DIP
8 Prepetition Collateral”). The total balance outstanding under the Secured Note as of
9 the Petition Date was not less than \$500,000 plus accrued interest, fees, costs and
10 expenses (the “Prepetition DIP Lender Obligations”).

11 (ii) *Prepetition Mortgage Lenders.* As of the Petition Date, the following
12 entities held first priority liens (the “Prepetition Liens”) under their respective loan
13 documents (the “Prepetition Documents”) on certain of the Debtors’ properties
14 identified on Schedule 1 to the DIP Agreement (the “Prepetition Collateral”):
15 Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as
16 Owner Trustee of MFA 2022-RTL1 Trust; Lima One Capital, LLC as servicer
17 (collectively “Wilmington”), Redmond Funding Group, Tritalent Funding Group,
18 Inc., Socotra REIT 1, LLC, WE Alliance Secured Income Fund, LLC, and Jason
19 Yelowitz, in his capacity as trustee 2006 Trust Dated March 31, 2006 (collectively,
20 the “Prepetition Mortgage Lenders”).

21 (iii) *Validity, Perfection and Priority of DIP Lender Prepetition Liens and*
22 *Prepetition DIP Lender Obligations.* As of the Petition Date, (a) the DIP Lender
23 Prepetition Liens on the DIP Prepetition Collateral were valid, binding, enforceable,
24 non-avoidable, and properly perfected and were granted to, or for the benefit of, the
25 DIP Lender for fair consideration and reasonably equivalent value; (b) the DIP
26 Lender Prepetition Liens were senior in priority over any and all other liens on the
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1 DIP Prepetition Collateral, subject only to certain liens senior by operation of law
2 (solely to the extent such liens were valid, non-avoidable and senior in priority to
3 the DIP Lender Prepetition Liens as of the Petition Date and properly perfected prior
4 to the Petition Date or perfected subsequent to the Petition Date as permitted by
5 section 546(b) of the Bankruptcy Code) consisting solely of mechanic's lien and the
6 Prepetition Liens; (c) the Prepetition DIP Lender Obligations constitute legal, valid,
7 binding and non-avoidable obligations of the Debtors enforceable in accordance
8 with the terms of the Secured Note and the Deeds of Trust and are not subject to any
9 challenge or defense, including without limitation, respectively, avoidance,
10 subordination, recharacterization, recovery, reduction, set-off, offset, attack,
11 counterclaim, cross-claim or Claim (as defined in the Bankruptcy Code) of any kind
12 pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Debtors
13 have waived, discharged and released any right they may have to challenge the
14 Prepetition DIP Lender Obligations and the DIP Lender Prepetition Liens on the DIP
15 Prepetition Collateral and to assert any recoupments, offsets, defenses, claims,
16 objections, challenges, causes of action and/or choses of action against the DIP
17 Lender with respect to the Secured Note, the Deeds of Trust, the Prepetition DIP
18 Lender Obligations, the DIP Lender Prepetition Liens or the DIP Prepetition
19 Collateral; and (e) the Prepetition DIP Lender Obligations constitute allowed,
20 secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

21 E. Findings Regarding the Post-Petition Financing. Without prejudice to
22 the rights of any other non-Debtor party in interest, the Debtors admit, stipulate,
23 acknowledge and agree that:

24 (i) The Debtors have requested from the DIP Lender, and the DIP Lender
25 is willing to extend, the DIP Loans on the terms and conditions set forth in this Order
26 and the DIP Agreement.

1 (ii) *Need for Post-petition Financing.* The Debtors do not have sufficient
2 available sources of working capital, including cash collateral, to pay administrative
3 expenses and conclude a sale of their assets without the financing requested under
4 the Motion. The ability of the Debtors to obtain sufficient working capital and
5 liquidity through the proposed post-petition financing arrangements with the DIP
6 Lender as set forth in this Order and the DIP Agreement is vital to the Debtors'
7 ability to maximize the value of the assets of their bankruptcy estates (as defined
8 under section 541 of the Bankruptcy Code, the "Estates") through an orderly sale
9 process. Accordingly, the Debtors have an immediate need to obtain the post-
10 petition financing in order to, among other things, preserve and maximize the value
11 of the assets of their Estates.

21 (iv) *Approved Budget.* The Debtors have prepared and delivered to the DIP
22 Lender an itemized cash-flow forecast set forth on **Exhibit 2** attached hereto (as may
23 be modified from time to time in accordance with the Final Order and the DIP
24 Agreement, the “Approved Budget”). The Approved Budget has been approved by
25 the DIP Lender pursuant to the terms of the DIP Agreement. The Approved Budget
26 has been thoroughly reviewed by the Debtors and their management and sets forth,

1 among other things, projections for the periods covered thereby. The DIP Lender is
2 relying upon the Debtors' compliance with the Approved Budget (as further
3 described in Section 2.3.1 of this Order) in accordance with the terms of the DIP
4 Agreement, the Interim Order and this Final Order in determining to enter into the
5 post-petition financing arrangements and consent to the use of Cash Collateral on a
6 final basis provided for herein, subject to the restrictions set forth herein.

7 (v) *No Additional Post-Petition Borrowing.* Until such time as all DIP
8 Obligations are indefeasibly paid in full in cash, the Debtors shall not in any way or
9 at any time seek allowance of any administrative expense claim against the Debtors
10 of any kind or nature whatsoever, including, without limitation, claims for any
11 administrative expenses of the kind specified in, or arising or ordered under sections
12 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d),
13 552(b), 726, 1113 and 1114 of the Bankruptcy Code that is superior to or *pari passu*
14 with the Superpriority Claim (as defined below) provided herein, except with respect
15 to the Carve-Out.

16 (vi) *No Priming of DIP Liens.* Until such time as all DIP Obligations are
17 indefeasibly paid in full in cash, the Debtors shall not in any way prime or seek to
18 prime (or otherwise cause to be subordinated in any way) the liens provided to the
19 DIP Lender by offering a subsequent lender or any party-in-interest a superior or
20 *pari passu* lien or claim with respect to the DIP Collateral pursuant to section 364(d)
21 of the Bankruptcy Code or otherwise, except with respect to the Carve-Out (as
22 defined below);

23 (vii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The
24 terms of the DIP Facility and this Order reflect the Debtors' exercise of their prudent
25 business judgment, and are supported by reasonably equivalent value and fair
26 consideration. The terms and conditions of the DIP Agreement and this Order have
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1 been negotiated in good faith and at arms' length by and among the Debtors and the
2 DIP Lender, with all parties being represented by counsel. Any credit extended under
3 the terms of this Final Order shall be deemed to have been extended in good faith by
4 the DIP Lender, as that term is used in section 364(e) of the Bankruptcy Code.

5 (viii) *Good Cause*. The relief requested in the Motion and granted pursuant
6 to the terms of this Order is necessary, essential, and appropriate, and is in the best
7 interests of and will benefit the Debtors, their creditors, and their Estates, as its
8 implementation will, among other things, provide the Debtors with the necessary
9 liquidity to preserve and maximize the value of the Debtors' Estates for the benefit
10 of all the Debtors' creditors, and avoid immediate and irreparable harm to the
11 Debtors, their creditors, and their assets.

12 (ix) *Reservation of Rights*. Nothing herein shall (i) impair or modify the
13 application of section 507(b) of the Bankruptcy Code in the event that the adequate
14 protection provided to the Prepetition Mortgage Lenders hereunder is insufficient or
15 (ii) prejudice or limit the rights of the Prepetition Mortgage Lenders to seek
16 additional relief with respect to the use of Cash Collateral, to challenge the Debtors'
17 valuation of the Prepetition Collateral or to seek relief for additional adequate
18 protection. The receipt by the Prepetition Mortgage Lenders of the adequate
19 protection provided herein shall not be deemed an admission that the interests of the
20 Prepetition Mortgage Lenders are adequately protected.

21 (ix) *Immediate Entry*. Sufficient cause exists for immediate entry of this
22 Final Order pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in the
23 Cases has filed or made an objection to the relief sought in the Motion or the entry
24 of this Order, or any objections that were made (to the extent such objections have
25 not been withdrawn or resolved) are overruled.

26 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, THAT:**

1 **Section 1. Authorization and Conditions to Financing.**

2 1.1 Motion Granted. The Motion [ECF No. 33] is GRANTED in
3 accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Final
4 Order. Any objections to the Motion with respect to entry of this Final Order to the
5 extent not withdrawn, waived or otherwise resolved, and all reservations of rights
6 included therein, are denied and overruled on the merits.

7 1.2 Authorization to Borrow and Use Loan Proceeds. To enable the
8 Debtors to continue to preserve the value of their estates, and subject to the terms
9 and conditions of the Interim Order, this Final Order, the Approved Budget and the
10 DIP Documents, the Debtors are authorized to continue to be bound by, and perform
11 under the DIP Documents and to borrow in an aggregate principal amount not to
12 exceed \$5,250,000, or \$6,750,000, in the event the DIP Lender is granted a priming
13 lien on the VH Collateral (as defined in the DIP Agreement) upon further noticed
14 hearing and order of this court subsequent to this Final Order expressly granting such
15 priming lien, provided that disbursements of such amount are in accordance with the
16 Approved Budget, the DIP Agreement, and this Final Order. Upon the entry of this
17 Final Order, the Debtors shall be authorized to continue to use the DIP Collateral (as
18 defined below), including Cash Collateral, to execute and deliver all instruments and
19 documents which may be required or necessary for the performance by the Debtors
20 under the DIP Facility and the creation and perfection of the DIP Liens described in
21 and provided for by this Final Order and the DIP Documents, and to draw on the
22 DIP Facility to make any disbursement as specifically provided in the Approved
23 Budget (subject to the variances as set forth in the DIP Agreement and this Final
24 Order), but solely in accordance with the terms and conditions set forth in this Final
25 Order and the DIP Agreement.

26 1.3 DIP Agreement.

1 1.3.1 Approval. On a final basis as set forth in this Final Order
2 and to the extent not approved by the Interim Order, the DIP Agreement and each
3 term, condition, and covenant set forth therein are approved. All of such terms,
4 conditions, and covenants shall be sufficient and conclusive evidence of the
5 borrowing arrangements by and among the Debtors and the DIP Lender, and of each
6 Debtor's assumption and adoption of all of the terms, conditions, and covenants of
7 the DIP Agreement for all purposes, including, without limitation, to the extent
8 applicable, the payment when due of all DIP Obligations arising thereunder,
9 including, without limitation, all principal, interest, and fees and expenses,
10 including, without limitation, all of the DIP Lender's consultant fees and
11 professional fees (including attorney fees and expenses) as more fully set forth in
12 the DIP Agreement and further provided below, are approved. Notwithstanding
13 the foregoing any provision in the DIP Agreement related to any priming lien rights
14 as to the VH Collateral is not enforceable absent further order of this court after
15 further noticed hearing subsequent to this Final Order expressly granting such
16 priming lien pursuant to Section 364(d).

17 1.3.2 Amendment. Subject to the terms and conditions of the
18 DIP Agreement, the Debtors and the DIP Lender may amend, modify, supplement
19 or waive any provision of the DIP Agreement (an "Amendment") without further
20 approval or order of the court, provided that any Amendment shall require advance
21 notice and opportunity to object of no less than five (5) business days to the
22 Prepetition Mortgage Lenders, the U.S. Trustee and the official Committee of
23 Unsecured Creditors that has been appointed by the United States Trustee pursuant
24 to the October 20, 2023 Appointment of Unsecured Creditors Committee (Dkt. 102)
25 and the October 30, 2023 Amended Appointment of Unsecured Creditors
26 Committee (Dkt. 112) (the "Committee"), and if any party objects to the Amendment
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1 within the five (5) day notice period, the Debtors may not agree to the Amendment
2 without further order of the court.

3 **Section 2. Authorization and Conditions to Financing.** The DIP Lender shall have
4 no obligation to make any loans under the DIP Agreement unless the conditions
5 precedent to making such loans under the DIP Agreement have been satisfied in full
6 or waived by the DIP Lender in its sole discretion.

7 2.1 Priority and Liens.

8 2.1.1 Lien Grant. To secure the prompt payment and
9 performance of any and all obligations of the Debtors to the DIP Lender of whatever
10 kind, nature or description, absolute or contingent, now existing or hereafter arising,
11 the DIP Lender shall have and was granted pursuant to the Interim Order, effective
12 as of the Petition Date, valid and perfected (such liens, the “DIP Liens”):

13 (i) Pursuant to Section 364(c)(2) of the Bankruptcy Code,
14 first priority security interests and liens in and upon all of the DIP Collateral which,
15 as of the Petition Date, was not encumbered (besides by DIP Lender) or subject to
16 invalid, unperfected or avoidable liens (the “First Priority DIP Liens”). For the
17 avoidance of doubt, the First Priority DIP Liens shall encumber the DIP Prepetition
18 Collateral.

19 (ii) Pursuant to Section 364(c)(3) of the Bankruptcy Code,
20 second priority security interests and liens in and upon all of the DIP Collateral
21 which constitutes Prepetition Collateral, other than the DIP Prepetition Collateral
22 and valid liens in existence as of the Petition Date that are (i) perfected subsequent
23 to such date as permitted by Section 546(b) of the Bankruptcy Code and (ii) to the
24 extent such Liens are expressly permitted in writing by the Lender in its sole and
25 absolute discretion. (the “Second Priority DIP Liens”).

1 2.1.2 DIP Collateral. For purposes of this Final Order, the term
2 “DIP Collateral” shall have the meaning ascribed to the term “Collateral” in the DIP
3 Agreement, which term includes substantially all of the Debtors’ real property
4 assets.

5 2.1.3 Superpriority Administrative Expense. For all DIP
6 Obligations now existing or hereafter arising pursuant to this Final Order, the DIP
7 Agreement, or otherwise, the DIP Lender is granted an allowed superpriority
8 administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code,
9 having priority in right of payment over any and all other obligations, liabilities, and
10 indebtedness of the Debtors, whether now in existence or hereafter incurred by the
11 Debtors, and over any and all administrative expenses or priority claims of the kind
12 specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331,
13 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b),
14 364(c)(1), 546, 726 or 1114 or any other provision of the Bankruptcy Code, whether
15 or not such expenses or claims may become secured by a judgment lien or other
16 nonconsensual lien, levy, or attachment (the “Superpriority Claim”); provided,
17 however, that the Superpriority Claim shall be subject only to the payment of the
18 Carve-Out. The Superpriority Claim shall, for purposes of section 1129(a)(9)(A) of
19 the Bankruptcy Code, be considered an administrative expense allowed under
20 section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and
21 several basis, and shall be payable from and have recourse to all prepetition and
22 postpetition property of the Debtors and all proceeds thereof, subject only to the
23 Carve-Out and excluding proceeds of Avoidance Actions. Other than as expressly
24 provided in the DIP Agreement and this Order with respect to the Carve-Out, no
25 costs or expenses of administration, including, without limitation, professional fees
26 allowed and payable under sections 326, 328, 330, or 331 of the Bankruptcy Code,
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1 or otherwise, that have been or may be incurred in these Cases, or in any Successor
2 Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the
3 Superpriority Claim or the DIP Obligations, or with any other claims of the DIP
4 Lender arising hereunder.

5 2.1.4 Nature of DIP Liens; Section 552(b); Section 506(c) Lien
6 Priority. The DIP Liens shall be subject to the Carve-Out to the extent provided for
7 in Section 2.2 of this Order and shall not attach to Avoidance Actions or the proceeds
8 thereof. The DIP Liens and the Superpriority Claim (a) shall not be subject to
9 sections 510, 542, 549, 550, or 551 of the Bankruptcy Code, the “equities of the
10 case” exception of section 552 of the Bankruptcy Code, or section 506(c) of the
11 Bankruptcy Code, (b) shall be senior in priority and right of payment to (y) any lien
12 that is avoided and preserved for the benefit of the Debtors and their Estates under
13 section 551 of the Bankruptcy Code or otherwise and (z) any intercompany or
14 affiliate liens or claims of the Debtors, and (c) shall be valid and enforceable against
15 any trustee or any other estate representative appointed or elected in the Cases,
16 whether upon the conversion of any of the Cases to a case under chapter 7 of the
17 Bankruptcy Code or appointed in these Cases prior to conversion, or in any other
18 proceedings related to any of the foregoing (each, a “Successor Case”), and/or upon
19 the dismissal of any of the Cases or any Successor Case.

20 2.1.5 Enforceable Obligations. The DIP Agreement shall
21 constitute and evidence the valid and binding DIP Obligations of the Debtors, which
22 DIP Obligations shall be enforceable against the Debtors, their Estates, and any
23 successors thereto (including, without limitation, any trustee or other estate
24 representative in any Successor Case), and their creditors, in accordance with their
25 terms. No obligation, payment, transfer, or grant of security under the DIP
26 Agreement or this Final Order shall be stayed, restrained, voidable, avoidable,
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1 disallowable, or recoverable under the Bankruptcy Code or under any applicable law
2 (including, without limitation, under section 502(d) or based on any Avoidance
3 Actions), or subject to any avoidance, disallowance, impairment, reduction, setoff,
4 offset, recoupment, recharacterization, disgorgement, subordination (whether
5 equitable, contractual, or otherwise), counterclaim, cross-claim, defense, surcharge,
6 or any other challenge under the Bankruptcy Code or any applicable law or
7 regulation by any person or entity. All interest, fees paid or payable, and all
8 reasonable costs and expenses reimbursed or reimbursable (including, without
9 limitation, all fees, costs and expenses referred to in the DIP Facility and the DIP
10 Lender's reasonable attorneys' fees and expenses), by the Debtors to the DIP Lender
11 are approved.

12 2.1.6 Post-Petition Lien Perfection. This Final Order shall be
13 sufficient and conclusive evidence of the priority, perfection, and validity of the DIP
14 Liens and the AP Liens (as defined below), effective as of the Petition Date, without
15 any further act and without regard to any other federal, state, or local requirements
16 or law requiring notice, filing, registration, recording or possession of the DIP
17 Collateral, or other act to validate or perfect such security interest or lien (each, a
18 “Perfection Act”). Notwithstanding the foregoing, if the DIP Lender shall, in its sole
19 discretion, elect for any reason to file, record, or otherwise effectuate any Perfection
20 Act, the DIP Lender is authorized to perform such act, and the Debtors are authorized
21 and directed to perform such act to the extent necessary or reasonably required by
22 the DIP Lender, which act or acts shall be deemed to have been accomplished as of
23 the Petition Date, notwithstanding the date and time actually accomplished, and in
24 such event, the subject filing or recording office is authorized to accept, file, and/or
25 record any document in regard to such act in accordance with applicable law. The
26 DIP Lender may choose to file, record, or present a certified copy of this Order in
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1 the same manner as a Perfection Act, which shall be tantamount to a Perfection Act,
2 and, in such event, the subject filing or recording office is authorized to accept, file,
3 and/or record such certified copy of this Order in accordance with applicable law.
4 Should the DIP Lender so choose and attempt to file, record, and/or perform a
5 Perfection Act, no defect or failure in connection with such attempt shall in any way
6 limit, waive or alter the validity, enforceability, attachment, or perfection of the post-
7 petition liens and security interests granted herein by virtue of the entry of this Order.

8 2.2 Carve-Out. The “Carve-Out” is an amount equal to the sum of
9 (i) all fees required to be paid to the clerk of this court and to the Office of the United
10 States Trustee under section 1930(a) of title 28 of the United States Code plus
11 interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii)
12 fees and expenses of up to \$10,000 incurred by a trustee under section 726(b) of the
13 Bankruptcy Code (which is included in the notice set forth in (iii) below); and (iii)
14 allowed and unpaid claims for unpaid fees, costs and expenses (the “Professional
15 Fees”) incurred by persons or firms (“Professional Persons”) retained by the Debtors
16 or the Committee whose retention is approved by this court pursuant to sections 327,
17 328 or 363 and 1103 of the Bankruptcy Code (all Professional Persons shall be paid
18 pro rata from the Carve-Out), subject in all respects to the terms of and amendments
19 set forth in this Final Order and any other interim or other compensation orders
20 entered by this court that are incurred (A) at any time before delivery to the Debtors
21 of a Carve-Out Trigger Notice (as defined below), whether allowed by this court
22 prior to the delivery of a Carve-Out Trigger Notice, subject to any limits imposed by
23 the Approved Budget and this Order; *provided* that after the occurrence and during
24 the continuance of an Event of Default and delivery of written notice (the “Carve-
25 Out Trigger Notice”) thereof (which may be by email) to the Debtors, the Debtors’
26 counsel, the United States Trustee, and lead counsel for the Committee, if any, in an
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1 aggregate amount not to exceed \$200,000; *provided further*, that nothing herein shall
2 be construed to impair the ability of any party to object to the fees, expenses,
3 reimbursement or compensation described in clauses (i), (ii), (iii)(A) or (iii)(B)
4 above, on any grounds. The Carve-Out may be funded to an administrative reserve
5 account (the “Carve-Out Account”) on a weekly basis in an amount not to exceed
6 the amount budgeted for such Professional Persons in the Approved Budget, which
7 account shall be used to pay Professional Fees and any unpaid fees to the United
8 States Trustee. As cash flow permits, and assuming no issuance of a Carve-Out
9 Trigger Notice, the Debtors may pay the amounts set forth in the Approved Budget
10 for Professional Fees into the Carve-Out Account. Notwithstanding the foregoing,
11 the Carve-Out shall not include, apply to or be available for any fees or expenses
12 incurred by any party in connection with (a) the investigation, initiation or
13 prosecution of any claims, causes of action, adversary proceedings or other litigation
14 against the DIP Lender or any of its officers, directors and professionals; (b) attempts
15 to modify any of the rights granted to the DIP Lender; (c) attempts to prevent, hinder
16 or otherwise delay the DIP Lender’s assertion, enforcement or realization upon any
17 DIP Collateral in accordance with the DIP Agreement, the Prepetition Documents
18 or this Order (as applicable); *provided* that nothing in this section shall restrict the
19 rights of parties in interest during the Remedies Notice Period (as defined below);
20 (d) paying any amount on account of any claims arising before the commencement
21 of the Bankruptcy Case unless such payments are approved by an order of the court;
22 or (e) after delivery of a Carve-Out Trigger Notice, any success, completion, back-
23 end or similar fees. For the avoidance of doubt and notwithstanding anything to the
24 contrary herein, the Carve-Out shall be senior to all liens and claims securing the
25 DIP Loans, any adequate protection liens, if any, the Superpriority Claims and any
26 and all other liens or claims existing pursuant to the DIP Facility.

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1 2.3 Use of Cash Collateral; Adequate Protection.

2 2.3.1 Authorization to Use Cash Collateral. Subject to the terms
3 and conditions of this Final Order and the DIP Agreement, the Debtors shall be and
4 are authorized to use Cash Collateral (as defined in the Bankruptcy Code) in
5 accordance with, and solely and exclusively for the disbursements set forth in, the
6 Approved Budget. The DIP Lender's and Prepetition Mortgage Lenders' consent to
7 the use of Cash Collateral is subject to the Debtors' compliance with the Approved
8 Budget, which budget shall depict, on a weekly basis and line item basis, (i)
9 projected cash receipts, (ii) projected disbursements, and (iii) net cash flow, for the
10 first thirteen (13) week period from the Petition Date, and in the event that any actual
11 receipts are less than, or disbursements exceed, 10% of each such line item (with
12 any excess collections in subparagraph (i) or unspent amounts in subparagraph (ii)
13 being carried forward for the subsequent week), an "Event of Default" shall be
14 deemed to have occurred. The Debtors shall deliver to the DIP Lender and the
15 Committee, by not later than Thursday of each week, a certificate (in form and
16 substance acceptable to the DIP Lender) showing a reconciliation for the prior two-
17 week cumulative period and certifying that the Debtors are in compliance with the
18 Approved Budget. The budget shall be updated, modified, or supplemented by the
19 Debtors not less than one time in each four (4) consecutive week period with a copy
20 provided to the Committee when provided to the DIP Lender, and each such updated,
21 modified, or supplemented budget shall be approved in writing (including by email)
22 by, and shall be in form and substance satisfactory to, the DIP Lender, and no such
23 updated, modified or supplemented budget shall be effective until so approved. In
24 the event the Debtors fail to update, modify or supplement the Budget during a four
25 (4) consecutive week period, the Debtors' right to use Cash Collateral shall
26 terminate.

1 2.3.2 Adequate Protection Liens. As adequate protection of the
2 interests of the Prepetition Mortgage Lenders in their respective Prepetition
3 Collateral to the extent of any Diminution in value of such Prepetition Collateral, the
4 Debtors grant to the Prepetition Mortgage Lenders continuing, valid, binding,
5 enforceable and perfected security interests and liens (the “AP Liens”) on such
6 Prepetition Mortgage Lender’s respective Prepetition Collateral
7 (the “AP Collateral”). The AP Liens and the liens of the Prepetition Mortgage
8 Lenders on their respective Prepetition Collateral (the “Prepetition Mortgage
9 Lenders Liens”) shall be senior in priority to all other interests and liens of every
10 kind, nature and description, whether created consensually, by an order of the court
11 or otherwise, including, without limitation, liens or interests granted in favor of third
12 parties in conjunction with sections 363, 364 or any other section of the Bankruptcy
13 Code or other applicable law; *provided, however*, that the Prepetition Liens shall be
14 junior to the Superpriority Claims (as provided herein) and be subject to the Carve-
15 Out to the extent provided for in Section 2.2 of this Final Order.

16 2.3.3 Adequate Protection Payments. As additional adequate
17 protection of the interests of the Prepetition Mortgage Lenders in their respective
18 Prepetition Collateral to the extent of any Diminution in value of such Prepetition
19 Collateral, the Debtors shall pay the Prepetition Mortgage Lenders interest payments
20 required under any applicable agreement. Such interest payments shall be at the
21 contract rate.

22 2.3.4 Adequate Protection Claims. Effective as of the Petition
23 Date, the Prepetition Mortgage Lenders are granted allowed superpriority
24 administrative expense claims arising pursuant to section 507(b) of the Bankruptcy
25 Code against each of the Debtors with priority over all other administrative claims
26 (subject only to the Carve-Out and DIP Obligations, including the Superpriority
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1 Claim), including all claims of the kind specified under sections 503(b) of the
2 Bankruptcy Code (the “Adequate Protection Claims”), which administrative claims
3 shall have recourse to and be payable from all prepetition and postpetition property
4 of the Debtors, including any proceeds or property recovered in respect of any
5 Avoidance Actions. Other than the Carve-Out and the Superpriority Claim, no cost
6 or expense of administration of the Chapter 11 Cases shall be senior to, or *pari passu*
7 with, any of the Adequate Protection Claims.

8 **Section 3. Default; Rights and Remedies; Relief from Stay.**

9 3.1 Events of Default. It shall be an “Event of Default” under this
10 Final Order if an “Event of Default” as defined in the DIP Agreement occurs
11 (together with the passage of any applicable cure period set forth therein).

12 3.2 Rights and Remedies Upon Events of Default. Upon the
13 occurrence and continuance of an Event of Default, (x) the DIP Lender may declare
14 (i) the termination, reduction or restriction of any further commitment to the extent
15 any such commitment remains, (ii) all obligations to be immediately due and
16 payable, without presentment, demand, protest, or other notice of any kind, all of
17 which are expressly waived by the Loan Parties, and (iii) the termination of the DIP
18 Facility and the DIP Loans Documents as to any future liability or obligation of the
19 DIP Lender, but without affecting any of the liens or the obligations under the DIP
20 Facility; (y) without further notice, motion or application to, order of, or hearing
21 before, this court (other than such notice required by this Paragraph), the DIP Lender
22 may terminate, revoke, reduce or restrict the ability of the Debtors to use Cash
23 Collateral under this Order and the other DIP Loan Documents, and the Debtors’
24 ability to use rental proceeds of the DIP Collateral shall automatically terminate,
25 and, notwithstanding anything contained herein to the contrary, no further advances
26 shall be made under the DIP Facility unless and until the court enters an order
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1 directing otherwise; (z) upon the giving of five (5) business days' notice (the
2 "Remedies Notice Period") to the Debtors, the U.S. Trustee and the Committee (the
3 "Notice Parties"), the DIP Lender may exercise all other rights and remedies
4 provided for in this Final Order or the applicable DIP Loan Documents and
5 applicable law, free of the automatic stay of section 362 of the Bankruptcy Code.
6 During the Remedies Notice Period, any party in interest shall be entitled to seek an
7 emergency hearing with the court, for the sole purpose of contesting whether an
8 Event of Default has occurred and/or is continuing.

9 **Section 4. Good Faith.** The terms of this Final Order were negotiated in good faith
10 and at arm's length by and among the Debtors and the DIP Lender. The DIP Lender
11 shall be entitled to the full protections of section 364(e) of the Bankruptcy Code.

12 **Section 5. Collateral Rights.**

13 5.1 Collateral Rights. Until all of the DIP Obligations shall have
14 been indefeasibly paid and satisfied in full: (i) no other party shall foreclose or
15 otherwise seek to enforce any lien or claim in any DIP Collateral and (ii) upon and
16 after the occurrence of an Event of Default, and subject to the DIP Lender providing
17 five (5) Business Days prior written notice as set forth in Section 3.2, above, the DIP
18 Lender (or any of its employees, agents, consultants, contractors, or other
19 professionals) shall have the right, at the sole cost and expense of Debtors, to: (a)
20 enter upon, occupy and use any real or personal property, fixtures, equipment,
21 leasehold interests, or warehouse arrangements owned or leased by Debtors, and (b)
22 use any and all trademarks, tradenames, copyrights, licenses, patents or any other
23 similar assets of Debtors, which are owned by or subject to a lien of any third party
24 and which are or were used by any of the Debtors.

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1 5.2 No Marshaling. The DIP Lender shall not be subject to the
2 equitable doctrine of “marshaling” or any other similar doctrine with respect to any
3 of the DIP Collateral.

4 **Section 6. Other Rights and Obligations.**

5 6.1 No Modification or Stay of This Order. Notwithstanding
6 Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other
7 Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final
8 Order shall be immediately effective and enforceable upon its entry and there shall
9 be no stay of execution or effectiveness of this Final Order. Notwithstanding (a) any
10 stay, modification, amendment, supplement, vacating, revocation, or reversal of this
11 Order, any of the DIP Loan Documents or any term hereunder or thereunder or (b)
12 the dismissal or conversion of one or more of the Cases (each, a “Subject Event”),
13 (i) the acts taken by the DIP Lender in accordance with this Final Order, and (ii) the
14 DIP Obligations incurred or arising prior to the DIP Lender’s actual receipt of
15 written notice from Debtors expressly describing the occurrence of such Subject
16 Event shall, in each instance, be governed in all respects by the original provisions
17 of this Final Order, and the acts taken by the DIP Lender in accordance with this
18 Final Order and the DIP Agreement, and the DIP Liens granted to the DIP Lender
19 in the DIP Collateral, and the AP Liens granted to the Prepetition Mortgage Lenders
20 in the AP Collateral, and all other rights, remedies, privileges, and benefits in favor
21 of the DIP Lender and the Prepetition Mortgage Lenders pursuant to this Final Order
22 and the DIP Agreement, shall remain valid and in full force and effect pursuant to
23 section 364(e) of the Bankruptcy Code.

24 6.2 Power to Waive Rights; Duties to Third Parties. The DIP Lender,
25 in its sole and absolute discretion, shall have the right to waive any of the terms,
26 rights and remedies provided or acknowledged in this Final Order in respect of the
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1 DIP Lender (the “DIP Lender Rights”), with any such waiver to be made in writing
2 by the DIP Lender, and shall have no obligation or duty to any other party with
3 respect to the exercise or enforcement, or failure to exercise or enforce, any DIP
4 Lender Rights. Any waiver by the DIP Lender of any DIP Lender Rights shall not
5 be or constitute a continuing waiver. Any delay in or failure to exercise or enforce
6 any DIP Lender Right shall neither constitute a waiver of such DIP Lender Right,
7 subject the DIP Lender to any liability to any other party, nor cause or enable any
8 other party to rely upon or in any way seek to assert a defense to any obligation owed
9 by the Debtors to the DIP Lender.

10 6.3 Reservation of Rights. The terms, conditions, and provisions of
11 this Final Order are in addition to and without prejudice to the rights of the DIP
12 Lender to pursue any and all rights and remedies under the Bankruptcy Code, the
13 DIP Agreement (with respect to the DIP Lender), or any other applicable agreement
14 or law, including, without limitation, to seek relief from the automatic stay, to seek
15 an injunction, to oppose any request for use of cash collateral or granting of any
16 interest in the DIP Collateral or priority in favor of any other party, to object to any
17 sale of assets, and to object to applications for allowance and/or payment of
18 compensation of professionals or other parties seeking compensation or
19 reimbursement from the Debtors’ Estates.

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21 6.4 Binding Effect of Final Order.

22 6.4.1 Immediately upon entry by this court, this Final Order
23 shall be valid and binding upon and inure to the benefit of the DIP Lender, the
24 Prepetition Mortgage Lenders, the Debtors, and the property of the Debtors’ Estates,
25 all other creditors of any of the Debtors, any Committee, and all other parties in
26 interest and their respective successors and assigns (including any chapter 11 or
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1 chapter 7 trustee or any other fiduciary hereafter appointed as a legal representative
2 of the Debtors), in any of the Cases, any Successor Cases, or upon dismissal of any
3 Case or Successor Case.

4 6.4.2 Any order dismissing one or more of the Cases or any
5 Successor Case under section 1112 or otherwise shall be deemed to provide (in
6 accordance with sections 105 and 349 the Bankruptcy Code) that (a) the
7 Superpriority Claim and the DIP Liens shall continue in full force and effect
8 notwithstanding such dismissal until the DIP Obligations are indefeasibly paid and
9 satisfied in full, (b) the AP Liens and the Prepetition Liens shall continue in full force
10 and effective notwithstanding such dismissal until the obligations owing to the
11 Prepetition Mortgage Lenders (the “Prepetition Lender Obligations”) are
12 indefeasibly paid and satisfied in full, and (c) this court shall retain jurisdiction to
13 the greatest extent permitted by applicable law, notwithstanding such dismissal, for
14 the purposes of enforcing the Superpriority Claim, the DIP Liens, the AP Liens and
15 the Prepetition Mortgage Lenders Liens. In the event any court modifies any of the
16 provisions of this Final Order or the DIP Loan Documents following the Final
17 Hearing, (i) such modifications shall not affect the rights or priorities of the DIP
18 Lender and the Prepetition Mortgage Lenders pursuant to this Final Order with
19 respect to the DIP Collateral or any portion of the DIP Obligations which arise or
20 are incurred or are advanced prior to such modifications, and (ii) this Final Order
21 shall remain in full force and effect except as specifically amended or modified at
22 such Final Hearing.

23 6.5 Restrictions on Cash Collateral Use, Additional Financing, Plan
24 Treatment. All postpetition advances and other financial accommodations under the
25 DIP Agreement and the other DIP Loan Documents during the Final Period, and the
26 use of Cash Collateral, are made in reliance on this Final Order and there shall not
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1 at any time be entered in the Cases, or in any Successor Case, any order (other than
2 the Final Order) which (a) authorizes the use of Cash Collateral (as defined in the
3 Bankruptcy Code) of the Debtors in which the DIP Lender has an interest, or the
4 sale, lease, or other disposition of property of any Debtor's Estate subject to a lien
5 or security interest granted to the DIP Lender, except as expressly permitted
6 hereunder or in the DIP Agreement, (b) authorizes the use of Cash Collateral of the
7 Debtors, or the sale, lease, or other disposition of property of any Debtor's Estate
8 subject to a lien or security interest granted to the DIP Lender, except as expressly
9 permitted hereunder, or (c) authorizes under section 364 of the Bankruptcy Code the
10 obtaining of credit or the incurring of indebtedness secured by a lien or security
11 interest which is equal or senior to a lien or security interest in property in which the
12 DIP Lender hold a lien or security interest, or which is entitled to priority
13 administrative claim status which is equal or superior to that granted to the DIP
14 Lender, herein unless, in each instance (i) the DIP Lender shall have given its express
15 prior written consent with respect thereto (such consent to be in the DIP Lender's
16 absolute and sole discretion and no such consent being implied from any other
17 action, inaction, or acquiescence by the DIP Lender) or (ii) such other order requires
18 that all DIP Obligations shall first be indefeasibly paid and satisfied in full in
19 accordance with the terms of the DIP Agreement, including, without limitation, all
20 debts and obligations of the Debtors to the DIP Lender which arise or result from
21 the obligations, loans, security interests, and liens authorized herein, on terms and
22 conditions acceptable to the DIP Lender. The security interests and liens granted to
23 or for the benefit of the DIP Lender hereunder, the terms of the DIP Facility
24 approved hereby and the rights of the DIP Lender pursuant to this Final Order shall
25 not be altered, modified, extended, impaired, or affected by any plan of
26 reorganization or liquidation of the Debtors without the express prior written consent
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1 of the DIP Lender (such consent to be in the DIP Lender's absolute and sole
2 discretion).

3 6.6 Term; Termination. Notwithstanding any provision of this Final
4 Order to the contrary, the term of the DIP Agreement among the Debtors and the
5 DIP Lender authorized by this Final Order may be terminated pursuant to the terms
6 of the DIP Agreement.

7 6.7 Objections Overruled. All objections to the entry of this Final
8 Order are, to the extent not withdrawn or resolved, overruled.

9 6.8 No Liability to Third Parties. With respect to any approval or
10 disapproval of expenditures set forth in the Approved Budget, the DIP Lender shall
11 not: (a) be deemed to be in "control" of the operations of the Debtors; (b) owe any
12 fiduciary duty to the Debtors, their respective creditors, shareholders, or estates; or
13 (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with
14 respect to the operation or management of the Debtors (as such terms or similar
15 terms are used in the United States Comprehensive Environmental Response,
16 Compensation and Liability Act of 1980 or any similar federal or state statute).

17 6.9 Payments Free and Clear. Any and all payments or proceeds
18 remitted to the DIP Lender pursuant to the provisions of this Final Order, the DIP
19 Agreement or any subsequent order of this court shall be received free and clear of
20 any claim, charge, assessment, or other liability to the Debtors or the Debtors'
21 Estates.

22 6.10 Final Amount Notice Period. The Debtors shall provide fourteen
23 days' notice to the Committee prior to borrowing the Final Amount.

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1 **Section 7.** **Findings and Conclusions.** This Final Order shall constitute findings of
2 fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect
3 and be fully enforceable, as of the Petition Date, immediately upon execution hereof.
4 Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or
5 any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure,
6 this Final Order shall be immediately effective and enforceable upon its entry, and
7 there shall be no stay of execution or effectiveness of this Final Order.

8 **Section 8.** **Final Order Governs.** In the event that any provision of this Final Order
9 conflicts with any term of the DIP Loan Documents, this Final Order shall govern.

10 **Section 9.** **Effect of Stipulations on Third Parties.** The admissions, stipulations,
11 agreements and waivers set forth in Paragraph (D) of this Final Order (collectively,
12 the “Prepetition Lien and Claim Matters”) are and shall be binding on the Debtors,
13 any subsequent trustee, responsible person, examiner with expanded powers, and
14 other estate representative, and all creditors and parties in interest and all of their
15 successors in interest and assigns, including a Committee (if appointed), unless and
16 to the extent that a party in interest has properly filed an adversary proceeding or
17 contested matter under the Bankruptcy Rules (other than the Debtors, as to which
18 any Challenge (as defined below) is irrevocable waived and relinquished) and (i) has
19 timely filed an appropriate pleadings, and timely commenced the appropriate
20 proceeding required under the Bankruptcy Code and Bankruptcy Rules challenging
21 the Prepetition Lien and Claim Matters (each such proceeding or appropriate
22 pleading commencing a pleading or other contested matter, a “Challenge”) by no
23 later than the earlier of (A) for the Committee, sixty (60) days from the formation of
24 the Committee, or (B) seventy-five (75) days following entry of the Interim Order
25 for any other party in interest with requisite standing, (the occurrence of (A) or (B),
26 as applicable, the “Challenge Deadline”), as such applicable date may be extended
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1 in writing from time to time in the sole discretion of the applicable holder of a
2 Prepetition Lien, or by this court for good cause shown, and (ii) this court enters
3 judgment in favor of the plaintiff or movant in any such timely and properly
4 commenced Challenge proceeding and such judgment has become a final judgment
5 that is not subject to any further review or appeal. To the extent no Challenge is
6 timely and properly commenced by the Challenge Deadline, or to the extent such
7 proceeding does not result in a final and non-appealable judgment or order of this
8 court that is inconsistent with the Prepetition Lien and Claim Matters, then, without
9 further notice, motion or application to, order of, or hearing before, this court and
10 without the need or requirement to file any proof of claim, the Prepetition Lien and
11 Claim Matters shall, pursuant to this Final Order, become binding, conclusive and
12 final on any person, entity, or party in interest in the Bankruptcy Cases, and their
13 successors and assigns, and in any Successor Case for all purposes.

14 | **Section 10. Retention of Jurisdiction.** The court has and will retain jurisdiction to
15 | interpret and enforce the provisions of this Final Order.

///END OF ORDER///

18 | PRESENTED BY:

19 /s/ Dakota Pearce
20 DAKOTA PEARCE (WSBA 57011)

21 BERNARD D. BOLLINGER, JR. (*pro hac vice* pending)
22 JULIAN I. GURULE (*pro hac vice* pending)
23 KHALED TARAZI (*pro hac vice* pending)
BUCHALTER, a Professional Corporation

24 | *Counsel to Debtors and Debtors in Possession*